

February 27, 2023

Honorable Philip M. Halpern
The Honorable Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas Street
White Plains, New York 10601-4150

Re: Tarrin Davis v. Metro-North Railroad Company, C.A. No. 7:22-cv-05841-PMH

Dear Judge Halpern:

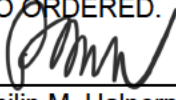
Cahill & Perry, P.C. represents the plaintiff and submits this letter in response to the Court's February 21, 2023 Order [Doc. 22]. The plaintiff seeks Court intervention on the following issues: a proper certification page, and Requests 31, 32, 33, and 24.

The plaintiff seeks an order provide a proper certification to its "under oath" or signed under "pains Ex. C to its February 21, 2023 Letter certification merely states that "the it is "under oath" or signed under p *Digneau*, 332 F.R.D. 450, 458 (W. sworn to before a notary public or d certification to indicate that it is "tru

With respect to **Requests 3** any responsive documents are bei D, pp. 2-3 (Def.'s Second Supplem plaintiff seeks a Court Order comp unless defendant represents that n objections. See *e.g. Id.*, Responses (indicating, as required by Rule 34, that "defendant is not currently withholding documents on the basis of objections.").

A conference has been scheduled for March 28, 2023 at 11:30 a.m. concerning the matters raised in plaintiff's letter dated February 27, 2023 (Doc. 23). The conference will be held in person in Courtroom 520 of the White Plains courthouse. The parties are directed to meet and confer by March 14, 2023 concerning these matters and shall endeavor to resolve their discovery disputes without the Court's intervention. The parties shall advise the Court by letter if the issues raised herein have been resolved prior to the scheduled conference. The Clerk of Court is respectfully directed to terminate the pending letter-motions (Docs. 19, 23).

SO ORDERED.


Philip M. Halpern
United States District Judge

Dated: White Plains, New York
February 28, 2023

The plaintiff seeks to compel MN to produce its contract with MetLife per **Request 33**: "MN and MetLife [Contract] for Supplemental Sickness Benefits in effect from 2019 to the present." MetLife provides supplemental sickness benefits (sick-pay) to MN employees who miss work due to an injury. MN is asserting a lien on any recovery by the plaintiff for funds MetLife provided the plaintiff. See App. B (Email from MN Claim Agent Jon Gibbs asserting MetLife Lien). MN produced a provision of the Collective Bargaining Agreement ("CBA") [Doc. 21-4 pp. 11-13] and did not produce the contract with MetLife. The CBA's reference to a right to set-off "Health and Welfare" benefits refers to on the job injury medical payments made by MN. The CBA does not allow or permit a "set-off" for Supplemental Sickness Payments made by MetLife. See Def.'s Ex. D, Doc. 21-4, p. 12, Sec. 11-G-1; *Torres v. Metro North*, 2023 WL 2088174 at 2, 1:20-CV-10782 (LJL) (Feb. 17, 2023 S.D.N.Y.) (attached hereto at App. C.) (holding

MN has no right to set-off sick leave pay from FELA liability). The plaintiff seeks to compel MN to produce the contract with MetLife to assess whether MN or MetLife have a valid lien on plaintiff's MetLife Supplemental Sickness Benefits from her FELA recovery.

The plaintiff also seeks an order compelling MN to produce responsive documents to **Request 24**.

We thank the Court for its consideration of this request.

Respectfully submitted,

/s/ Scott E. Perry

Scott E. Perry

Cc: Patricia Hines, Esq. (Via ECF)
Philip DiBerardino, Jr., Esq. (Via ECF)